

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

GURAL FOSTER

PLAINTIFF

v.

No. 4:15-cv-237-DPM

CAROLYN W. COLVIN, Acting Commissioner,
Social Security Administration*

DEFENDANT

ORDER

On *de novo* review, the Court adopts the recommendation, *No. 15*, as modified, and overrules Foster's objections, *No. 16*. FED. R. CIV. P. 72(b)(3). Foster didn't exhaust his administrative remedies back in 2010. He recently asked the Administration to reconsider. *No. 16 at 2-4*. But that request hasn't been acted on yet according to the record before the Court. The Commissioner moves to dismiss Foster's complaint with prejudice. *No. 13 at 5*. But a dismissal for lack of jurisdiction should be without prejudice. *Ahmed v. United States*, 147 F.3d 791, 797 (8th Cir. 1998). The Commissioner's motion, *No. 13*, is therefore granted in part and denied in part. Foster's motion for a hearing, *No. 10*, is denied. Foster's complaint will be dismissed without prejudice.

*The Court directs the Clerk to correct the docket.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

7 December 2015